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No. 91-373

Supreme Court, U.S.

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In The
Supreme Court of the United States
October Term, 1991

ANGEL FIGUEROA VIVAS,

Petitioner,

vs.

PUERTO RICO,

Respondent.

Petition For Writ Of Certiorari
To The Supreme Court Of Puerto Rico

REPLY BRIEF FOR PETITIONER

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In its brief in opposition the Special Independent Prosecutor alleges (Br. Opp. 7) that petitioner "was an integral part of a conspiracy by the government of the Commonwealth of Puerto Rico in 1978 to cover up two vicious murders committed by the police at Cerro Maravilla". This is the first time in this long procedure against petitioner that he has been accused of conspiracy. The truth is that only one witness, Mr. Jesús Quiñones, alleges that petitioner exercised over him under pressure. There is sufficient evidence in the record that question the veracity of this sole allegation.

As to the Special Independent Prosecutor allegation that the federal questions presented by petitioner were

not properly presented before the Supreme Court of Puerto Rico, this is not so, as we presented in our petition (Appendix L, pp. 229, 231, 234, Appendix M, pp. 253, Appendix K, pp. 202-212; 225-227), on three different occasions the federal questions here presented were properly and timely presented before the Supreme Court of Puerto Rico. In the present case the Supreme Court of Puerto Rico acted as court of primary jurisdiction and not in its appellate function.

The Special Independent Prosecutor alleges that petitioner failed to indicate in which way he was prejudice by the change in the precedure. This is not so (Pet. 9-12) we sustain that Law Number 1 provoked that the Supreme Court of Puerto Rico changed the whole procedure with the sole purpose to make it more onerous to petitioner. And we believe that the President of the Senate had political motivation in doing so.

There is a big difference between the United States Supreme Court Opinion of *Withrow v. Larking*, 21 U.S. 35 (1975) and *In Re Murchison*, 349 U.S. 133 (1955). Here we are not talking that the judges of the Puerto Rico Supreme Court issue arrest warrant on the basis that there is a probable cause to believe that a crime has been committed (Withrow, supra at p. 724, 42 L. Ed. 2d). Here the Supreme Court of Puerto Rico after studying, examining, evaluating and pondering all the evidence, exonerated one of the complainers and determine cause against the petitioner. By doing so it passes judgment on the credibility that the evidence deserved. Since that moment we believe the Honorable Judges were completely contaminated with the whole evidence and the petitioner had no probability of prevailing.

As to the ex post facto issue, it must be clear that we believe that this is an ex post facto law with purely political motivation and that as such, it violate petitioner's constitutional rights. The President of the Senate, as we said before, abused his powers and presented a new law with the only purpose to guarantee that his political points of view were to prevail in the process against petitioner. Due Process prohibits Congress from enactments which shock sense of fair play (*Radio Position Finding Corp. v. Bedix Corp.*, D.C. Md. 1962, 205 F.Supp. 850. Affirmed 83 S. Ct. 548, 371 U.S. 577).

We also want to respectfully call the attention of this Honorable Court that in his brief in opposition the Special Independent Prosecutor does not challenge our allegation that the Supreme Court of Puerto Rico adjudicate the case of petitioner solely of a matter of credibility unjustly.

The Special Independent Prosecutor in his brief does not mention our allegation contained at page 29 of our brief as to how independent is the Special Independent Prosecutor. It will be fair to bring up this issue once more since to our surprise the counsel of record appearing for the Special Independent Prosecutor is brother counsel Marcos A. Ramirez Lavandero, who was also the attorney that represented the President of the Senate when he presented two motions submitting evidence against the herein petitioner in the criminal case that was filed against him. (Pet. 13).

Justice must satisfy the appearance of justice. *Offut v.*
U.S., 348 U.S. 11.

Respectfully submitted,

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